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IMPROVING SUPPORT FOR JURORS IN CANADA

Report of the Standing Committee on Justice and Human Rights

Anthony Housefather, Chair

MAY 2018
42nd PARLIAMENT, 1st SESSION

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Chair

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NOTICE TO READER

Reports from committee presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

has the honour to present its

TWENTIETH REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has studied counselling and other mental health supports for jurors and has agreed to report the following:

TABLE OF CONTENTS

LIST OF RECOMMENDATIONS 1

IMPROVING SUPPORT FOR JURORS IN CANADA 5

INTRODUCTION 5

CHAPTER 1: JURY DUTY 7

CHAPTER 2: THE NEED TO IMPROVE THE INFORMATION PROVIDED TO JURORS 13

CHAPTER 3: SUPPORTING JURORS AFTER THE VERDICT 19

3.1 Encouraging debriefing sessions to facilitate closure 19

3.2 Providing better psychological support to jurors 24

CHAPTER 4: THE IMPLICATION OF THE SECRECY RULE 30

CHAPTER 5: CONDITIONS IN WHICH JURORS PERFORM THEIR DUTIES 33

5.1 Importance of adequately compensating jurors 33

5.2 Optimizing the physical environment in which jurors perform their duty 37

CHAPTER 6: PROVIDING TRAINING FOR JUDGES, CORONERS AND JUDICIAL OFFICIALS TO INCREASE AWARENESS OF THE MENTAL HEALTH NEEDS OF JURORS 41

CHAPTER 7: THE NEED FOR COLLABORATION BETWEEN FEDERAL, PROVINCIAL AND TERRITORIAL GOVERNMENTS 44

CONCLUSION 45

Appendix A: List of Witnesses 47

Appendix B: List of Briefs 51

Appendix C: England and Wales Juror's Pamphlet 53

Appendix D: Provincial and Territorial Legislative Authorities for Juror Compensation 57

Request for Government Response 69

LIST OF RECOMMENDATIONS

As a result of their deliberations, committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

Recommendation 1 – Information Package

That the Minister of Justice encourage provinces and territories to make available a complete and up-to-date information package about jury duty for prospective and selected jurors. This package should be available in both English and French and, where appropriate, in Indigenous and other languages. It should be drafted in clear and simple language. This package should be made publicly available, including through electronic means.

The package should contain information on:

a) **the role and responsibilities of jurors;**

b) **the compensation provided;**

c) **the legal concepts and mechanics of the trial process or the inquest;**

d) **the deliberations process, including tools to help jurors manage interpersonal conflict;**

e) **what jurors can do if they have questions about the evidence or the instructions from the judge;**

f) **the potential impact that jury duty can have on mental health, as well as the symptoms of stress jurors could experience during and after the legal proceedings as well as what symptoms are normal and which require consultation with a mental health professional;**

g) **how the juror can contact a mental health professional for assistance post-trial or inquest; and**

h) coping mechanisms to deal with stress and potentially traumatic evidence and testimony, the importance of self-care, and strategies jurors can use to help them feel better.

This package should be shared with the jury pool in the initial notice sent out to potential jurors. When jurors are selected, the information package should be handed to them by the clerk or other court officials and reviewed with them so that it is fully understood. 18

Recommendation 2 – Debriefing Sessions

That the Minister of Justice encourage the provinces and territories to implement a policy that would ensure that, after their jury service has ended, jurors be offered a debriefing session. The format of these sessions, including the person who will facilitate them and the time allocated to them, should be left to the discretion of judicial officials. 24

Recommendation 3 – Psychological Support

That the Minister of Justice encourage the provinces and territories to offer a psychological support and counselling program to all jurors after their jury service has ended.

The program should not provide any predetermine time limit for jurors to access the services.

The number of free sessions should be left to the discretion of a mental health professional.

Counselling sessions should be available in both official languages and, where possible, in Indigenous languages or the juror's preferred language. 28

Recommendation 4 – A More Lenient Secrecy Rule for Jury Deliberations

That the Government of Canada amend section 649 of the *Criminal Code* so that jurors are permitted to discuss jury deliberations with designated mental health professionals once the trial is over. 32

Recommendation 5 – Daily Allowance

That the Minister of Justice encourage the provinces and territories to offer jurors a daily allowance for services rendered of at least $120 throughout the legal proceedings which should be adjusted to reflect cost of living increases. 37

Recommendation 6 – Compensation for Related Costs

That the Minister of Justice encourage the provinces and territories to offer jurors compensation to cover the costs associated with serving as a juror, such as the cost of care for dependent children or adults, travel, parking and meals. 37

Recommendation 7 – Optimal Physical Environment for Jurors

That the Minister of Justice encourage the provinces and territories to minimize casual interactions between jurors and other participants in the proceedings outside the courtroom to reduce the potential for intimidation and awkwardness. Some of the initiatives may include special parking spaces and access to the courthouse and courtroom. The general comfort of jurors should also be considered. Rooms should be sufficiently large and well lit, and include areas where jurors can be alone to recharge, if necessary..... 40

Recommendation 8 – Funding to the National Judicial Institute

That the Government of Canada provide funding to the National Judicial Institute to develop training designed to increase judicial awareness of the mental health needs of jurors..... 43

Recommendation 9 – Increasing Awareness

That the Minister of Justice encourage the provinces and territories to support training programs aimed at increasing awareness among judges, coroners and judicial officials who interact with jurors, such as sheriffs and bailiffs, of the potential impact of legal proceedings on the mental health of jurors in order to ensure an environment that is more responsive to their mental health needs..... 43

Recommendation 10 – Federal Funding

That the Government of Canada provide funding on a one-time basis to the provinces and territories to cover some of the costs resulting from the implementation of the recommendations set out in this report. 44

Recommendation 11– Sharing the Findings and Recommendations of the Committee

That the Minister of Justice, at the earliest opportunity, share the practices recommended in this report with the Minister's provincial and territorial counterparts during the next meeting of the federal-provincial-territorial ministers responsible for justice and public safety. 44

IMPROVING SUPPORT FOR JURORS IN CANADA

INTRODUCTION

Jurors are an important pillar of the justice system.

Mr. Mark Farrant, a former juror

Our right to trial by jury depends on the willingness of all citizens to serve, but doing so should not be at the expense of a juror's own mental health.

Ms. Tina Daenzer, a former juror

At its June 8, 2017 meeting, the House of Commons Standing Committee on Justice and Human Rights (the Committee) unanimously agreed to a motion that it "conduct a study, at the earliest opportunity, into counselling and other mental health supports for jurors and that it report its findings to the House."[1] This would be the first such study by a parliamentary committee of this important matter.

Between November 22, 2017 and February 8, 2018, the Committee held eight meetings in Ottawa to hear evidence from witnesses, which included former jurors, Canadian and foreign government representatives who work directly with juries or in justice departments, and Canadian and international lawyers amongst other experts interested in the stressors associated with jury duty.[2]

The witnesses who appeared as part of this study were in complete agreement; participating in a trial or a coroner's inquest as a member of the jury is an important civic duty and a key part of our justice system and our democracy. For the vast majority of jurors, it is a positive and enriching experience. In fact, despite the difficulties they encountered, every one of the former jurors who appeared before the Committee said

1 House of Commons, Standing Committee on Justice and Human Rights (JUST), *Minutes*, 1st Session, 42nd Parliament, 8 June 2017.

2 A list of witnesses who appeared before the committee is set out in Appendix A and a list of briefs submitted to the committee, in Appendix B of this report.

they were prepared to serve again should they be summoned.[3] Nevertheless, jury duty can be stressful, and some jurors exhibit symptoms of post-traumatic stress as a result of their experience.

Witness statements clearly show that it is possible to prevent or reduce the stress jurors experience, particularly by improving the preparation process and the conditions under which jurors fulfill their duties throughout the legal proceedings,[4] as well as by providing jurors with psychological support, as needed. It is a worthwhile investment: according to the World Health Organization, every dollar invested in mental health results in about $4 in savings.[5]

The objective of this report is to provide a solid foundation to allow the implementation of approaches that would offer adequate support to jurors across the country, while recognizing the need to tailor approaches to local needs. The Committee recognizes that justice is a matter of shared jurisdiction and that the federal, provincial and territorial governments must collaborate to improve support for jurors across the country. During its study, the Committee identified best practices in the field, which helped shape the observations and recommendations in this report.

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3 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Patrick Fleming, As an Individual; Scott Glew, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual). The Committee was told that, in England and Wales, "81% of people who served on a jury said, at the end of their jury service, that they would be happy to serve again if summoned." JUST, *Evidence*, 1st Session, 42nd Parliament, 8 February 2018 (Cheryl Thomas, Professor, Judicial Studies, Director, Jury Project, Faculty of Laws, University College London, University College London, As an Individual). See also, JUST, 1st Session, 42nd Parliament, Janeatt Hogan, Counselling and Other Mental Health Supports for Jurors, Brief, 26 March 2018.

4 The term "legal proceedings" is used in this report as a general term that includes the proceedings of criminal and civil trials and coroners' inquests.

5 See, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Vivien Lee, Psychologist, Centre for Addiction and Mental Health). In the same vein, Ms. Katy Kamkar, a clinical psychologist, noted in her testimony that "[f]ocusing on mental health promotion, prevention, and early intervention would benefit the public, employers, workers, families, insurance companies, and our society. The focus would produce a positive return on investment including reduced social, occupational, mental, and physical disability, reduced medical utilization, improved therapy outcomes and prognosis, with a return to healthier functioning, improved social and family relationships, and improved well-being and quality of life." JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Katy Kamkar, Clinical Psychologist, Centre for Addiction and Mental Health).

CHAPTER 1: JURY DUTY

In Canada, members of the public have a role to play in ensuring the effective administration of justice. One of those roles is to serve on a jury when being summoned. Every year, thousands of citizens are called on to assume this role because, in some circumstances, a trial by judge and jury is a right.

For criminal cases, section 11(f) of the *Canadian Charter of Rights and Freedoms*[6] grants any person charged with an offence the right "to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment." As provided in section 471 of the *Criminal Code*, "except where otherwise expressly provided by law, every accused who is charged with an indictable offence shall be tried by a court composed of a judge and jury".[7] In certain circumstances, the accused can still opt for trial without a jury. When a person is charged with a crime listed in section 469 of the *Criminal Code*, the trial will automatically take place before a judge and jury, unless the person charged with the offence and the Attorney General agree to a trial without a jury.[8] The jury is then called upon to reach a unanimous verdict, determining whether the accused is guilty beyond a reasonable doubt based on the evidence presented by the prosecutor.

While most civil cases are heard by a judge alone, a defendant may also have the right to a trial by judge and jury, depending on the nature of the case and the court. Civil juries must decide, on a balance of probabilities, whether the plaintiff proved that the defendant violated civil law. There are six jurors in a civil case and at least five of them must agree upon a verdict.

Finally, coroners' inquests, which aim to inform the public of the circumstances of a death, require jurors as well. Jurors must respond to questions about the circumstances of a death and may make non-binding recommendations. Unlike in civil or criminal cases, jurors are not required to render a verdict on anyone's legal responsibility.

The parameters for jury duty are set out in provincial and territorial legislation. This legislation establishes the criteria to serve as a juror or to be exempted, as well as the juror selection process and any compensation that may be provided. As a result, the administration of jury duty varies considerably from one province or territory to another.

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6 Constitution Act, 1982, *Canadian Charter of Rights and Freedoms*.

7 *Criminal Code*, R.S.C. (1985), c. C-46, s. 471.

8 *Criminal Code*, R.S.C. (1985), c. C-46, ss. 469 and 473(1).

According to Ms. Julia Bielecka of the Ontario Juror Support Program, "[j]uries are drawn from a broad cross-section of society, and because of that, they can act as the conscience of the community."[9] However, as this report will show, that representivity often suffers for a number of reasons, including due to the insufficiency of the compensation offered to jurors.

In general, witness statements indicated that serving as a juror can increase a sense of civic participation and be a rewarding experience.[10]

> Don't get me wrong: serving on this jury [coroner's inquest into the death of Ashley Smith], while very challenging, had its positive impacts. I learned so much about Canada's correctional, legal, and health care systems. Through speaking up for someone who could no longer speak for herself, I've learned how to speak up for myself more, and I certainly treat people with more care now.[11]

> I would do my civic duty again. I believe the justice system in Canada is truly one of the best in the world. I witnessed first-hand the rights of the accused, the judge's constant assurance that the accused should receive a fair and unbiased trial.[12]

> I feel extraordinarily honoured to have been selected for such an important role, and still believe it to be a vital part of our society. I would do it again.[13]

Serving as a juror also involves significant stress and can seriously affect jurors' lives.[14] What causes stress varies from one person to another. It could be changes to daily routine, financial hardship, difficult and contentious deliberations or being exposed to disturbing information. The Committee learned that the decision-making process during deliberations can be very stressful for jurors. Some individuals dislike the confrontation that sometimes occurs between jurors and some fear making the wrong decision or

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9 JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Julia Bielecka, Manager, Operational Support, Court Services Division, Ministry of the Attorney General, Ontario Juror Support Program).

10 Professor Cheryl Thomas said that "jury service could have far-reaching, positive effects on civic life in general. There is some research from the United States that shows that jurors who had never voted before were more likely to vote at the next election after they had served on a jury." JUST, *Evidence*, 1st Session, 42nd Parliament, 8 February 2018 (Cheryl Thomas, Professor, Judicial Studies, Director, Jury Project, Faculty of Laws, University College London, As an Individual).

11 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual).

12 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Scott Glew, As an Individual).

13 JUST, 1st Session, 42nd Parliament, Janeatt Hogan, Counselling and Other Mental Health Supports for Jurors, Brief, 26 March 2018.

14 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Michelle Lonergan, Ph.D. Candidate, As an Individual).

rendering a verdict that will have a life-altering impact.[15] The following statements illustrate how much stress jurors often experience:

> Jurors feel this burden of participation in the justice system due to the seriousness of the consequences of their decision.[16]
>
> After participating in the [jury] process for a year, I felt a high amount of pressure to do a good job, give the right answer, give the best recommendations [at the end of the coroner's inquest].[17]
>
> I had overwhelming feelings of guilt from making such a life-altering decision about the defendants' lives.[18]
>
> For me, the most difficult process in serving as a juror was that of deliberations and the resulting post-trial discharge.... It's confusing and highly complicated, but there is an immense drive to do the right thing.[19]

In addition, some legal proceedings deal with horrible crimes and involve traumatic or explicit evidence and testimony which can include disturbing audio or video. This can be very stressful for the jurors who are exposed to it, as the following statements show:

> Images would haunt me day after day, an unrelenting bombardment of horror. My daughter's red finger painting would hurtle me back to the scene of the crime and I would stare transfixed, seemingly out of space and time.[20]
>
> What I had to watch—those girls being raped and tortured—wasn't just watching evidence; it was sitting in a box where I felt I couldn't do anything to save them. It was excruciating for me.[21]

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15 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual; Michelle Lonergan, Ph.D. Candidate, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Jane Goodman-Delahunty, Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (Brian Bornstein, Professor of Psychology, Courtesy Professor of Law, University of Nebraska-Lincoln, As an Individual).

16 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Jane Goodman-Delahunty, Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University, As an Individual).

17 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual).

18 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Patrick Fleming, As an Individual).

19 JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Michaela Swan, As an Individual).

20 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Mark Farrant, As an Individual).

21 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Tina Daenzer, As an Individual).

> For three weeks, we heard testimony and were shown photographs of the injuries to two little girls, the stories were told of what and how it happened and near the end, autopsy photos of a four-year-old girl. I don't think any of the 14 people in that jury box would be particularly ready to see those kinds of images.[22]

Moreover, some jurors can experience feeling of isolation. Currently, in Canada, jurors cannot discuss the case with anyone, as per section 649 of the *Criminal Code*.[23] They are cut off from their family and friends and their usual support networks with whom they would normally share troubling information and receive advice or encouragement. This can also be very stressful.

> I felt isolated from my family and friends. I would distance myself, and I could not share what I was going through.... I felt guilty for not being present for my family emotionally and physically.[24]

> [T]he trial was three weeks away from work and things like that. It impacts family life during those three weeks, and not just you but your spouse and your family. It is substantially longer than that when you come out of a trial and you're trying to get your bearings again.[25]

Jurors can also suffer from overwork between their obligations as a juror and the daily demands and responsibilities in their personal lives. Many jurors spend the day in court but then spend the evening catching up with work, family and household responsibilities. This can lead to exhaustion, especially during longer legal proceedings.[26]

Finally, the Committee noted that the stress jurors experience can manifest itself in various ways. Unfortunately, little research has been done on the psychological effects on jurors. It is estimated, however, that in general, only a small minority of jurors are

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22 JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Daniel Cozine, As an Individual).

23 *Criminal Code*, R.S.C. (1985), c. C-46, s. 649.

24 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Patrick Fleming, As an Individual).

25 JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Daniel Cozine, As an Individual).

26 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Mark Farrant, As an Individual; Scott Glew, As an Individual).

diagnosed with post-traumatic stress disorder (PTSD).[27] Others experience a number of symptoms associated with PTSD,[28] which may last for years.

> It's been over 22 years. I still have residual effects. If your 85-year-old granny is standing on the side of the road waving me down to help her with her broken-down car, I ain't stopping. I'm not stopping for anybody. I'm distrustful of most strangers. My family life is back to regular, but as a societal person, I'm highly distrustful of people.[29]

> To this day, I worry all the time that something will happen to my kids, that someone in their life will hurt them the way the victim was hurt. I am super vigilant and accused of being way too overprotective, but knowing what I know, I cannot be too careful with who looks after my kids.[30]

> Going back to work, the remaining part of that school year, I did not have a lot of trust in things that were happening with kids.... For now, as I say, the issue comes up in different ways, at different times. I have gotten past some of that distrust, yet there are times where, for example, I may be lying in bed, and if my feet cross over, I have to immediately uncross them, because of pictures I've seen. This is now two years out, and those things are still coming up.[31]

> I experienced nightmares, recurrent thoughts, loss of sleep, loss of balance, weight loss. Grinding of teeth at night escalated to clenching of teeth during the day, which led to headaches. I had a general feeling of anger all the time, and the feeling of helplessness.[32]

It is also important to note that in locations where communities are small and isolated jurors may experience exceptionally stressful situations, particularly when "[t]hey are asked to sit in judgment of fellow community members who are often friends, acquaintances, or even relatives."[33] For example, Mr. Mark Mossey of the Nunavut Court of Justice pointed out that "Nunavut's unique challenges, from geography to climate,

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27 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Michelle Lonergan, Ph.D. Candidate, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (Sandra Donaldson, Vice-President, American Society of Trial Consultants); JUST, *Evidence*, 1st Session, 42nd Parliament, 8 February 2018 (Paula Hannaford-Agor, Director, Center for Jury Studies, National Center for State Courts).

28 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual).

29 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Tina Daenzer, As an Individual).

30 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Scott Glew, As an Individual).

31 JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Daniel Cozine, As an Individual).

32 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual)

33 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (Mark Mossey, Executive Legal Officer, Office of the Senior Judge, Judges' Chambers, Nunavut Court of Justice).

isolation to poverty, have an exponential impact on stresses already built into the jury system in Nunavut."[34]

Lastly, the witnesses who appeared before the Committee made it clear that serving as a juror can have a significant effect on an individual's life. Jurors may experience stress before, during and after the legal proceedings. Providing a comprehensive information kit before the trial or the inquest, establishing conditions favourable to the jurors' well-being while they serve, and providing psychological support when needed, are all good practices to reduce stress. The following sections present the Committee's observations and recommendations about improving the experience of jurors across the country.

34 Ibid.

CHAPTER 2: THE NEED TO IMPROVE THE INFORMATION PROVIDED TO JURORS

Overall, witnesses were concerned that the information provided to prospective and selected jurors in Canada is inadequate.[35] Throughout this study, a number of recommendations and best practices were discussed regarding the type of information prospective and selected jurors should have access to before the commencement of a trial or a coroners' inquest. This section draws on the testimony and briefs received by the Committee to address information deficiencies.

> **"[T]here should be an education package to let people know what being a juror is. A lot of people don't even know what that process is, what that looks like. ... [W]hen you go to the courthouse and go through the first step of the process, you don't know what's coming next; there's no kind of manuscript or direction of where you're going next, who you're going to be talking to, etc."**
>
> Mr. Scott Glew, a former juror

For many Canadians, being summoned for jury duty is the first and only experience they will have with the justice system. Indeed, the evidence we heard suggests that few prospective jurors are knowledgeable about what jury duty entails[36] and that unfamiliarity with the process itself often generates anxiety.[37] Therefore, when summoned for jury duty, many will feel overwhelmed and stressed. As expressed by Professor Jane Goodman-Delahunty: "Jurors are moving into an environment that is very unfamiliar to them. This can be very intimidating, and that alone can be somewhat stressful."[38]

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35 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Scott Glew, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Michaela Swan, As an Individual; Daniel Cozine, As an Individual).

36 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Patrick Fleming, As an Individual).

37 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (Brian Bornstein, Professor of Psychology, Courtesy Professor of Law, University of Nebraska-Lincoln, As an Individual).

38 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Jane Goodman-Delahunty, Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University, Sydney, Australia, As an Individual).

To alleviate some of the stress experienced at this early stage in the process, prospective jurors need guidance.[39] They need to know, for example, their legal obligations as a juror, what clothing is appropriate for court, what compensation they are going to receive if selected, what security measures are available, who will be responsible for the parking or the transportation fees, and what allowances, if any, will be available for child or elder care expenses.[40] According to Dr. Patrick Baillie:

> The finances and the mechanics are the things that allow jurors to have some sense of control over what's going on in their lives. When people don't feel control, they tend to experience higher levels of anxiety, and so if you give them that information, they will have a little bit more knowledge about what to expect in terms of the mechanics.[41]

Uncertainty about the upcoming proceedings and about the role and responsibilities of jurors can also add to the stress they may experience early in the process and, for those selected, throughout the legal proceedings. Several witnesses recommended removing some of the mystery before jurors are called into the courtroom by providing them with general information about court procedures and, where appropriate, about the actual case.[42] More specifically, prospective and selected jurors should be given information about their role and responsibilities as jurors,[43] the different stages of civil or criminal trials or coroners' inquests, the projected schedule of the case and, where appropriate, information that would allow them to prepare for the difficult evidence they may experience during the proceedings. The information also should be provided in plain language that is appropriate to jurors without a legal background.

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39 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Scott Glew, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (Brian Bornstein, Professor of Psychology, Courtesy Professor of Law, University of Nebraska-Lincoln, As an Individual).

40 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Shannon Jensen, Manager, Court Operations, Yukon Court Services); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual; Peter Jaffe, Professor, Faculty of Education, Western University, As an individual).

41 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual).

42 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Scott Glew, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Michaela Swan, As an Individual; Daniel Cozine, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Dora Newcombe, Alberta Juror Support Program); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (William M. Trudell, Chair, Canadian Council of Criminal Defence Lawyers).

43 Ms. Breese Davies noted that jurors must understand, among other things, the restrictions resulting from section 649 of the *Criminal Code*, which provide that it is a criminal offence to discuss the contents of the deliberations. JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Breese Davies, Vice-President, Criminal Lawyers' Association).

The Committee was told that in Alberta "[i]f [judges] feel it's appropriate, they will provide some details [to prospective jurors] about what they might expect in this particular case."[44] In contrast, the Committee learned that in Ontario "[i]t is up to the discretion of the judicial official to determine how much, if any, information is going to be shared with those [selected] jurors at the commencement of trial."[45] This latter excerpt from the testimony suggests that only selected jurors in Ontario may receive information about the estimated length of the trial or the type of evidence that is expected.

During her testimony, Ms. Michaela Swan, a former juror, suggested that prospective jurors should have access to sufficient information to make an informed decision to serve, comments that were echoed by Mr. Daniel Cozine, also a former juror.[46] In Ms. Swan's words:

> I believe that jurors should have an informed choice to serve, and I sa[y] that because I genuinely think that in life there are different times when you can take on more, and then there are times when things are already sort of at the end and you can't take on any more.
>
> To serve as a juror, you need space, because it's going to take time in your life to process, to be involved, and to be away from your career and your family and personal pressures.[47]

It is also very important for jurors to understand the potential impacts of jury duty on their mental health and well-being. Providing jurors with a list of the common symptoms that could occur during and after their service (and what is normal and what is problematic) would allow them to recognize signs of distress and ask for help if needed.[48] Jurors should also be informed of healthy coping strategies to deal with stress

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44 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 November 2017 (Shauna Jobagy, Deputy Clerk of the Court, Court of Queen's Bench, Alberta Juror Support Program).

45 JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Julia Bielecka, Manager, Operational Support, Court Services Division, Ministry of the Attorney General, Ontario Juror Support Program).

46 JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Michaela Swan, As an Individual; Daniel Cozine, As an Individual).

47 JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Michaela Swan, As an Individual).

48 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Vivien Lee, Psychologist, Centre for Addiction and Mental Health); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual; Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Michel Rodrigue, Vice-President, Organizational Performance and Public Affairs, Mental Health Commission of Canada; Katy Kamkar, Clinical Psychologist, Centre for Addiction and Mental Health).

occurring during their service.[49] On these points, Dr. Katy Kamkar from the Centre for Addiction and Mental Health indicated the following:

> Education about the potential impact of traumatic material during the jury service, common psychological symptoms one might experience, what constitutes normal reactions, and what reactions should be taken as warning signs for engaging more help should be provided.
>
> Healthy coping resources should [also] be provided prior to trial to help with anticipatory anxiety and this transition from normal life to jury service.[50]

The Committee was told that early detection of signs of psychological distress is crucial.[51] As explained by Mr. Micheal Pietrus from the Mental Health Commission of Canada, "if you are aware, you can seek that early help and support to make sure that it doesn't become a much more chronic issue."[52] Pretrial training can also help in building resiliency, as noted by Mr. Michel Rodrigue from the Mental Health Commission of Canada.[53] In the same vein, Dr. Patrick Baillie pointed out that "[p]roviding some education prior to the start of the process as sort of a stress inoculation approach can be an important part of reducing the symptoms of PTSD."[54]

A number of jurisdictions in Canada and abroad are currently providing jurors with a brochure at the conclusion of their jury duty that identifies:[55]

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49 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Greg Kyllo, National Director, Program Innovation, Canadian Mental Health Association; Vivien Lee, Psychologist, Centre for Addiction and Mental Health); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual; Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Micheal Pietrus, Director, Mental Health First Aid Canada and Opening Minds, Mental Health Commission of Canada).

50 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Katy Kamkar, Clinical Psychologist, Centre for Addiction and Mental Health).

51 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Patrick Fleming, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Vivien Lee, Psychologist, Centre for Addiction and Mental Health).

52 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Micheal Pietrus, Director, Mental Health First Aid Canada and Opening Minds, Mental Health Commission of Canada).

53 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Michel Rodrigue, Vice-President, Organizational Performance and Public Affairs, Mental Health Commission of Canada).

54 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual).

55 The brochures are also available online in certain jurisdictions, e.g. in Ontario. JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Julia Bielecka, Manager, Operational Support, Court Services Division, Ministry of the Attorney General, Ontario Juror Support Program).

> common signs and symptoms of stress reactions, offers suggestions for self-care and ways that family and friends can help, and provides information on how to access professional counselling services on a voluntary and confidential basis.[56]

In Saskatchewan, since December 2017, "the ministry's juror assistance and support program policy requires the sheriff's office to provide all jurors with the program's brochure at the conclusion of their service or during the proceeding at the direction of the court."[57]

Like all witnesses, the Committee agrees that educating jurors about the potential impact of exposure to traumatic material during the proceedings and about healthy coping skills to alleviate stress before and throughout the proceedings is a good practice, which should be pursued by all jurisdictions and be part of the information package that jurors receive.[58]

The Committee was particularly impressed with the jurors' notice handed out by judges to all selected jurors in England and Wales. The three-page pamphlet provides a simple and clear explanation of jurors' legal obligations and the potential consequences of not respecting these rules.[59] According to the research conducted by Professor Cheryl Thomas, the introduction of the jurors' notice "made a dramatic difference in jurors' understanding of their legal responsibilities."[60] The Committee feels strongly that a similar notice could benefit Canadian jurors and encourages provincial and territorial authorities to consider the pamphlet used in England and Wales as a basis for their own documentation.[61]

In light of these considerations, the Committee recommends:

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56 JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Shannon Jensen, Manager, Court Operations, Yukon Court Services).

57 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Warren Miller, Sheriff and Local Registrar, Queen's Bench Court, Court Services, Ministry of Justice, Government of Saskatchewan).

58 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Vivien Lee, Psychologist, Centre for Addiction and Mental Health); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Micheal Pietrus, Director, Mental Health First Aid Canada and Opening Minds, Mental Health Commission of Canada).

59 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 8 February 2018 (Cheryl Thomas, Professor, Judicial Studies, Director, Jury Project, Faculty of Laws, University College London).

60 Ibid.

61 A reproduction of the England and Wales jurors' pamphlet is available in Appendix C.

Recommendation 1 – Information Package

That the Minister of Justice encourage provinces and territories to make available a complete and up-to-date information package about jury duty for prospective and selected jurors. This package should be available in both English and French and, where appropriate, in Indigenous and other languages. It should be drafted in clear and simple language. This package should be made publicly available, including through electronic means.

The package should contain information on:

a) **the role and responsibilities of jurors;**

b) **the compensation provided;**

c) **the legal concepts and mechanics of the trial process or the inquest;**

d) **the deliberations process, including tools to help jurors manage interpersonal conflict;**

e) **what jurors can do if they have questions about the evidence or the instructions from the judge;**

f) **the potential impact that jury duty can have on mental health, as well as the symptoms of stress jurors could experience during and after the legal proceedings as well as what symptoms are normal and which require consultation with a mental health professional;**

g) **how the juror can contact a mental health professional for assistance post-trial or inquest; and**

h) **coping mechanisms to deal with stress and potentially traumatic evidence and testimony, the importance of self-care, and strategies jurors can use to help them feel better.**

This package should be shared with the jury pool in the initial notice sent out to potential jurors. When jurors are selected, the information package should be handed to them by the clerk or other court officials and reviewed with them so that it is fully understood.

CHAPTER 3: SUPPORTING JURORS AFTER THE VERDICT

This section of the report deals with the main shortcomings that emerged with regard to supporting jurors following the conclusion of their services and the Committee's recommendations to address those shortcomings.

3.1 Encouraging debriefing sessions to facilitate closure

Generally, when the verdict is rendered, the duty of jurors ends, with the exception of jurors in a coroner's inquest who may, after rendering their verdict, make recommendations based on the evidence presented to them or when an accused has been found guilty of second degree murder in accordance with section 745.2 of the *Criminal Code*.[62] The Committee heard repeatedly that for a number of jurors, particularly the ones serving on extensive and gruesome trials or inquests, the transition back to normal life may be challenging.[63] According to Mr. Patrick Fleming, jurors need assistance to get back to their normal life:

> **"At the end of the trial, it was so abrupt. One minute I was reading a guilty verdict to five individuals, putting them away for 25 years plus another 25, and then the very next minute the court doors opened, and I was going home. Think about that."**
>
> Mr. Patrick Fleming, a former juror

> We need assistance getting back to our "normal" life. We are civilians who did not choose this path for ourselves nor are we trained to deal with this type of situation. Being a juror is a monumental job that has had a major impact on my life.[64]

Many of the former jurors who participated in our study drew attention to the difficulties they had suffered when their jury experience ended. One recommendation put forward by witnesses to facilitate the transition of jurors back to their normal life

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62 *Criminal Code*, R.S.C. (1985), c. C-46, s. 745.2.

63 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Patrick Fleming, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Daniel Cozine, As an Individual; Michaela Swan, As an Individual).

64 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Patrick Fleming, As an Individual).

and to provide them with a sense of closure was to offer debriefing sessions as a standard practice after their duty has concluded.[65]

The Committee did not examine the policies and practices in effect in all Canadian jurisdictions regarding the debriefing of juries. However, the evidence collected suggests that the situation varies across jurisdictions, and even within the same jurisdiction. Based on her experience as a defence lawyer, Ms. Breese Davies from the Criminal Lawyers' Association noted that:

> it is completely inconsistent. I know some judges do debrief with the jury and give the follow-up information, so for some trials I've been involved in, a number of the jurors showed up for the sentencing hearing. For some trials, none did, and I doubt that there was any debriefing at the end.[66]

"Within 20 minutes of delivering a verdict, and after four days of being sequestered, I walked through an open parking lot with 11 other strangers and returned to normal life. I had Sunday to reconnect with my family and was back to work Monday."

Ms. Michaela Swan, a former juror

Ms. Julia Beliecka from the Ontario Juror Support Program noted similarly:

> I don't think there is a formal debriefing process [across the province of Ontario]. I am aware that certain judicial officials, depending on the facts of the case and on what has happened during the course of that trial, may choose to address the jury [after the verdict is rendered]. What happens at the end is that the jurors are provided with this brochure and informed about the counselling services that are available to them.[67]

In the same vein, Ms. Shauna Jobagy from the Alberta support program noted that after rendering their verdict, jurors:

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65 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Patrick Fleming, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Daniel Cozine, As an Individual; Michaela Swan, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Julia Bielecka, Manager, Operational Support, Court Services Division, Ministry of the Attorney General, Ontario Juror Support Program); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual; Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual).

66 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Breese Davies, Vice-President, Criminal Lawyers' Association).

67 JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Julia Bielecka, Manager, Operational Support, Court Services Division, Ministry of the Attorney General, Ontario Juror Support Program).

> are ushered out of the courtroom and into their jury room, they pick up their backpacks, and they go home. What we have been doing in certain jurisdictions is have a clerk to kind of oversee the jury. She will meet with them at the end to remind them about the package, but there's no debriefing.[68]

In contrast, the Committee learned that it is becoming a common practice in some American states for judges to meet with jurors after the verdict.[69]

> **"It was rather shocking that there was no debrief. There was no standardization of dismissal. It just seemed to be incredibly abrupt and convoluted, literally 'pack your bags and off you go'."**
>
> Mr. Mark Farrant, a former juror

Debriefing sessions can take many forms. For most of the jurors who participated in this study, the debriefing consisted of the judge's meeting jury members after the verdict was delivered to thank them for their work. Some perceived that gesture as positive,[70] while others perceived it as insufficient.[71] Debriefing sessions can also be headed by a mental health professional and be more formal. In such case, judges are present mostly to answer legal questions

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68 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 November 2017 (Shauna Jobagy, Deputy Clerk of the Court, Court of Queen's Bench, Alberta Juror Support Program).

69 Ms. Paula Hannaford-Agor told the committee the following: "Actually, a lot of state court judges now make a point of meeting with the jurors after the trial is over, not in a semi-formal environment but an environment that is less formal than a courtroom, first of all just to say, 'Thank you for being here', and also to answer any questions they may permissibly answer. There are some things that they obviously cannot discuss with the jurors, but jurors have a lot of questions. What we've heard from judges who routinely do this is that they have an opportunity to learn a lot from jurors, and jurors really appreciate the extra acknowledgement by the judges of their participation. Typically, those judges will also give them some ideas about what to do if they encounter difficulties after trial, particularly if it's been a difficult trial, and will say to them that they can contact the court." JUST, *Evidence*, 1st Session, 42nd Parliament, 8 February 2018 (Paula Hannaford-Agor, Director, Center for Jury Studies, National Center for State Courts).

70 Ms. Michaela Swan told the committee that: "Even having the judge come in after we delivered our verdict was a healthy thing for us just to decompress." She also voiced that she would have appreciated a more formal debriefing with the group, but the timing was difficult: "It was almost 11 o'clock on a Saturday night and we wanted to get home to our own beds and our families. But I would have liked to come back even the next day or week [for a debriefing session]. I went through a period in which I wanted to be with that group, and then I thought I needed some space, and then I wanted to come back." JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Michaela Swan, As an Individual); See also JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual).

71 For Mr. Mark Farrant, the gesture was not sufficient to answer his needs. He noted: "Our trial was a little bit unusual in the sense that the justice came to our jury room and had a cup of tea with us, but that's very unusual. Even then, that wasn't a dismissal; it was just to say, 'You all went through a really long trial, and I just want to say thanks.' It was literally a handshake. That didn't help me." JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Mark Farrant, As an Individual).

jurors may have. They then turn the session over to someone with mental health expertise to facilitate the discussion.[72]

All former jurors who participated in this study were in favour of post-trial debriefings. It was understood that some jurors needed a debriefing session to reach closure and others needed it for information purposes. Mr. Daniel Cozine noted, for example:

> To debrief with the people who were in the [deliberation] room with you, to get an idea of what everyone else is thinking and feeling about these things, I think is absolutely essential.[73]

Although the full impact of post-trial debriefings on lowering stress is unclear,[74] the experts we heard from believe that this is a good practice and that it should be encouraged.[75] For instance, one of the experts noted that debriefing alone may not be sufficient, but it allows "the jury to vent as a group about some of their experiences."[76] According to Ms. Sonia Chopra of Chopra Koonan Litigation Consulting:

> Debriefing by the judge should be routine, no matter what type of case. I think there's a misperception that only jurors who serve on gruesome murders or child cases experience stress, and that's not true.... sometimes it can be a rather mundane case, but problems within the group dynamics or the deliberation room can also result in stress.[77]

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72 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Jane Goodman-Delahunty, Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University, Sydney, Australia, As an Individual).

73 JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Daniel Cozine, As an Individual).

74 Ms. Marie-Eve Leclerc noted, for example, that "evidence revealed that debriefing alone may be insufficient to reduce the levels of pathology among those jurors. As with many treatments, combining several evidence-based practices would likely result in optimal outcomes." JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Marie-Eve Leclerc, Ph.D. Candidate, As an Individual); Similarly, Professor Brian Bornstein noted that although: "[j]urors tend to appreciate the opportunity to vent afforded by a debriefing, and judges also find debriefing useful, but how much it alleviates any actual symptoms of stress is somewhat unclear." JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (Brian Bornstein, Professor of Psychology, Courtesy Professor of Law, University of Nebraska-Lincoln, As an Individual).

75 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Jane Goodman-Delahunty, Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University, Sydney, Australia, As an Individual).

76 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual). See also, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Marie-Eve Leclerc, Ph.D. Candidate, As an Individual; Michelle Lonergan, Ph.D., Candidate, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Peter Jaffe, Professor, Faculty of Education, Western University, As an individual).

77 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual).

Different views were presented during this study as to how debriefing sessions should unfold. More specifically, questions remain such as what is the appropriate format? Should debriefing be a standardized practice? Who should facilitate these sessions (a mental health professional or a qualified counsellor[78] or a judicial official[79])? When would it be more appropriate for the session to occur (either immediately after the verdict is rendered or a couple of weeks later)? Nevertheless, all agreed that debriefing should never be mandatory for jurors.

The Committee agrees with witnesses that a debriefing session should be a routine practice and that it should also be offered to jurors excluded from the deliberations.[80] Jurors must not feel abandoned at the end of the legal procedures. Ensuring that jurors have access to some sort of a debriefing is also a good way to provide them with a sense of closure. The Committee came to the conclusion that debriefing could be either more or less formal depending on the case. It could also be led by either judicial officials or mental health professionals depending on the specifics of the case.

The Committee does not think that there is a need to adopt a single debriefing model, since it is reasonable to expect differences in the way the debriefing sessions will be conducted depending on the judge, or coroner, and the case. The Committee also believes that the debriefing session is the perfect time to remind jurors of the psychological support available to help them cope with the aftermath of their service, if necessary.

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78 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Peter Jaffe, Professor, Faculty of Education, Western University, As an individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Marie-Eve Leclerc, Ph.D. Candidate, As an Individual).

79 Professor Jane Goodman-Delahunty noted that "it is valuable for jurors to receive some debriefing, whether it is conducted by the trial presiding judge or whether it is conducted by a professional, particularly in cases that have been of long duration or cases in which there has been confronting or gruesome evidence." JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Jane Goodman-Delahunty, Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University, Sydney, Australia, As an Individual). According to Ms. Breese Davies, "training judges on how to do that and providing them with support if they do not feel comfortable doing it would be important. If someone else is going to do it, if you're going to have a facilitator, you still run into the section 649 problem, because there may well be discussion in that debriefing that would run afoul of section 649." See JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Breese Davies, Vice-President, Criminal Lawyers' Association).

80 Mr. Daniel Cozine reminded the committee of the importance of providing a special debriefing session to jurors who are excluded from the deliberations. In some cases, he noted that the transition back to normal life for these jurors may be more difficult considering they do not know how the jury came to the verdict. Indeed, often, the number of selected jurors will be superior to twelve in order to ensure that, if a juror is excused during the proceedings, there will still be a sufficient number of jurors to deliberate. See JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Daniel Cozine, As an Individual).

Throughout this study, other ideas were put forward for consideration, such as allowing peer-led debriefing post-trial,[81] or implementing automatic post-trial follow-up for jurors where officials could check in on them and inform them of the subsequent proceedings in the case they were involved in.[82] The Committee does not feel that it has collected sufficient information to address these issues. The Committee is also concerned that peer-led debriefing could pose a danger to the secrecy of jury deliberations.[83]

In light of these considerations, the Committee recommends:

Recommendation 2 – Debriefing Sessions

That the Minister of Justice encourage the provinces and territories to implement a policy that would ensure that, after their jury service has ended, jurors be offered a debriefing session. The format of these sessions, including the person who will facilitate them and the time allocated to them, should be left to the discretion of judicial officials.

3.2 Providing better psychological support to jurors

Over the course of this study, a number of mental health researchers and organizations echoed jurors' concerns about jurors' mental health and well-being. They reported common symptoms that may be experienced by jurors, including intrusive thoughts,

> **"I cannot emphasize enough how strongly I feel that all civilians who are chosen to be a juror should be offered mental health support after a trial has ended."**
>
> Mr. Patrick Fleming, a former juror

81 Mr. Daniel Cozine noted: "Peer support, having other jurors who have been through the process and have been in the tiny jury-room, as Michaela mentioned, and have been in those deliberations, the stress of watching the families in the courtroom, things like that.... Only jurors really know what that's about and can maybe give some advice on how to deal with that." JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Daniel Cozine, As an Individual; Michaela Swan, As an Individual). See also, JUST, 1st Session, 42nd Parliament, Janeatt Hogan, Counselling and Other Mental Health Supports for Jurors, Brief, 26 March 2018.

82 Ms. Michaela Swan noted the following: "I believe follow-up to jury members on the conclusion of sentencing would help to close the experience. My sentencing went on for a year after we delivered our verdict. The only updates I would get were in the media, and it was always bringing it up. It would have been nice to hear from the court." JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Michaela Swan, As an Individual). See also JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Mark Farrant, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Vivien Lee, Psychologist, Centre for Addiction and Mental Health; Patrick Baillie, As an Individual).

83 Section 649 of the *Criminal Code* establishes the rule of secrecy of jury deliberations prohibiting jurors to discuss deliberations with anyone.

nightmares, trouble sleeping, the development of phobias, anger, loss of appetite, a sense of isolation from loved ones, hypervigilance, depression, anxiety and substance abuse problems.[84]

Not all jurors are affected in the same way by legal proceedings, and stress levels vary widely between individuals.[85] As Ms. Sonia Chopra mentioned, even if the case before the court is "rather mundane", the group dynamic during the proceedings may be very stressful for some jurors.[86]

While witness statements revealed that very few jurors are affected by PTSD or experience similar symptoms,[87] many experts indicated that those who witness a traumatizing event or hear details about it can later be diagnosed with PTSD. This can be the case for jurors who, without any training, are presented with traumatic materials.[88]

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84 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Michelle Lonergan, Ph.D. Candidate, As an Individual; Greg Kyllo, National Director, Program Innovation, Canadian Mental Health Association; Vivien Lee, Psychologist, Centre for Addiction and Mental Health; Brian Bornstein, Professor of Psychology, Courtesy Professor of Law, University of Nebraska-Lincoln, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Katy Kamkar, Clinical Psychologist, Centre for Addiction and Mental Health).

85 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Tina Daenzer, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Daniel Cozine, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Michel Rodrigue, Vice-President, Organizational Performance and Public Affairs, Mental Health Commission of Canada); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (Brian Bornstein, Professor of Psychology, Courtesy Professor of Law, University of Nebraska-Lincoln, As an Individual).

86 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual).

87 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Michelle Lonergan, Ph.D. Candidate, As an Individual; Greg Kyllo, National Director, Program Innovation, Canadian Mental Health Association; Vivien Lee, Psychologist, Centre for Addiction and Mental Health); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Peter Jaffe, Professor, Faculty of Education, Western University, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (Sandra Donaldson, Vice-President, American Society of Trial Consultants).

88 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Michelle Lonergan, Ph.D. Candidate, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Peter Jaffe, Professor, Faculty of Education, Western University, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Michel Rodrigue, Vice-President, Organizational Performance and Public Affairs, Mental Health Commission of Canada).

As a result, there was almost universal agreement amongst witnesses that jurors should have access to free psychological support after the trial.[89] The Committee wholeheartedly supports this recommendation. In light of the testimony, the Committee believes that this support should be available after jury service has ended, whether they be criminal cases, civil cases or coroner's inquests, and to all jurors, whether they participated in the deliberations or not.[90] A number of jurors said they had received this kind of support and that it had helped a great deal.[91]

The Committee heard from various representatives of programs that offer jury support in the provinces and territories. For example, Ontario, Alberta, Saskatchewan and Yukon have implemented support programs for jurors that include free counselling sessions at the end of a trial. The Committee applauds these initiatives and encourages other provinces and territories to follow suit so that psychological support is offered to jurors who need it after their jury service has ended.

Unfortunately, there is still a stigma associated with mental health issues.[92] As explained by Ms. Vivien Lee, a psychologist, because of such stigma, jurors "often do not recognize or seek help until much later, when their difficulties have impacted many aspects of their work and personal lives."[93] To address this issue and increase the number of people who use mental health resources, it was suggested that the situation be normalized – that is, that all jurors be informed that stress might be experienced and that there are resources

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89 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Katy Kamkar, Clinical Psychologist, Centre for Addiction and Mental Health; Michel Rodrigue, Vice-President, Organizational Performance and Public Affairs, Mental Health Commission of Canada); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (William Trudell, Chair, Canadian Council of Criminal Defence Lawyers). Of these witnesses, some were in favour of psychological support being offered both during and after the trial.

90 Mr. Daniel Cozine and Mr. Patrick Baillie explained that, occasionally, more than 12 jurors are retained so that the trial may proceed if a juror must be excused during the trial. The extra jurors are selected at random and excluded from the deliberations. As a result, some jurors who participated throughout the trial and heard all the testimony and saw all the evidence are excluded from the deliberations. It was noted that this situation could be very difficult for jurors who were excused prior to the deliberations. In the Committee's opinion, if more than 12 jurors were empanelled, they should all have access to psychological support. See JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Daniel Cozine, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual).

91 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Mark Farrant, As an Individual; Tina Daenzer, As an Individual; Scott Glew, As an Individual).

92 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Vivien Lee, Psychologist, Centre for Addiction and Mental Health); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual).

93 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Vivien Lee, Psychologist, Centre for Addiction and Mental Health).

available to help them.[94] In light of the evidence heard, the Committee believes that jurors should be informed before, during and after a trial of the psychological support available.[95]

Similarly, because it is possible for symptoms to arise at a later date, the Committee believes that no predetermine time limit should be imposed on jurors to access psychological support after their jury service has ended.[96] It was also suggested that no cap should be placed on the number of available counselling sessions.[97] The Committee agrees with this recommendation and encourages the provinces and territories to put in place juror support programs where the number of counselling sessions is left to the discretion of a mental health professional.

The Committee also wishes to emphasize that it is important for jurors to have access to counselling sessions in either English or French and, where possible, in Indigenous languages or the juror's preferred language. It is also extremely important that services be offered in a variety of ways (for example, in person, over the phone or online) to ensure better access.

In addition, given that long trials may be challenging for jurors, a number of witnesses suggested that it would be helpful to provide jurors with breaks during the legal proceedings.[98] The Committee is of the opinion that this could be beneficial for jurors, but it believes this decision should be left to the discretion of the judge.

In light of these considerations, the Committee recommends the following:

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94 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual).

95 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Vivien Lee, Psychologist, Centre for Addiction and Mental Health; Greg Kyllo, National Director, Program Innovation, Canadian Mental Health Association).

96 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Mark Zaborowski, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Katy Kamkar, Clinical Psychologist, Centre for Addiction and Mental Health); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Marie-Eve Leclerc, Ph.D. Candidate, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual).

97 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Mark Farrant, As an Individual).

98 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Vivien Lee, Psychologist, Centre for Addiction and Mental Health).

Recommendation 3 – Psychological Support

That the Minister of Justice encourage the provinces and territories to offer a psychological support and counselling program to all jurors after their jury service has ended.

The program should not provide any predetermine time limit for jurors to access the services.

The number of free sessions should be left to the discretion of a mental health professional.

Counselling sessions should be available in both official languages and, where possible, in Indigenous languages or the juror's preferred language.

During this study, several witnesses said that jurors should also have access to psychological support during the legal proceedings to help them deal with stress.[99] Other witnesses indicated that offering psychological support during the trial would raise concerns about the rights of the accused as this might risk influencing deliberations.[100] It was noted that jurors who experience psychological distress during a trial are "going to have difficulty performing their task, and they should be excused."[101]

In Ontario, unlike in Alberta,[102] jurors do not have access to psychological support during the trial. As Ms. Julia Bielecka of the Ontario Juror Support Program said, if a juror experiences difficulties during a trial, the individual should "make that concern known to the judicial official. It would then be up to the judicial official to determine whether it's appropriate for that person to seek counselling or whether it's appropriate for that

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99 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Tina Daenzer, As an Individual; Scott Glew, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual; Vivien Lee, Psychologist, Centre for Addiction and Mental Health); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Peter Jaffe, Professor, Faculty of Education, Western University, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Katy Kamkar, Clinical Psychologist, Centre for Addiction and Mental Health); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Michel Rodrigue, Vice-President, Organizational Performance and Public Affairs, Mental Health Commission of Canada).

100 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Breese Davies, Vice-President, Criminal Lawyers' Association); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (William Trudell, Chair, Canadian Council of Criminal Defence Lawyers).

101 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (William M. Trudell, Chair, Canadian Council of Criminal Defence Lawyers).

102 JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Shauna Jobagy, Deputy Clerk of the Court, Court of Queen's Bench, Alberta Juror Support Program).

person to be excused and not continue."[103] This method is intended to "balance the legal obligations and the understanding that this is something that would probably have to be up to the discretion of the judicial official in the courtroom."[104]

103 JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Julia Bielecka, Manager, Operational Support, Court Services Division, Ministry of the Attorney General, Ontario Juror Support Program).

104 Ibid.

CHAPTER 4: THE IMPLICATION OF THE SECRECY RULE

Throughout this study, serious concerns were raised about the secrecy rule set out in section 649 of the *Criminal Code*, which prohibits jurors from discussing the contents of the deliberations with anyone.[105]

> **Disclosure of jury proceedings**
>
> **Section 649**: Every member of a jury, and every person providing technical, personal, interpretative or other support services to a juror with a physical disability, who, except for the purposes of
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> (a) an investigation of an alleged offence under subsection 139(2) in relation to a juror, or
>
> (b) giving evidence in criminal proceedings in relation to such an offence,
>
> discloses any information relating to the proceedings of the jury when it was absent from the courtroom that was not subsequently disclosed in open court is guilty of an offence punishable on summary conviction.[106]

As previously noted, jury deliberations are a challenging experience that can be particularly stressful for some jurors.[107] According to Ms. Sonia Chopra, "[b]eing able to talk about it, to debrief, being able to share your experiences, is one of the most effective ways to reduce stress levels [at this stage]."[108]

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105 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual; Marie-Eve Leclerc, Ph.D. Candidate, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual; Mark Zaborowski, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Breese Davies, Vice-President, Criminal Lawyers' Association). It was also mentioned that the secrecy of the deliberations limits the research and studies that mental health professionals can carry out on how jury duty affects mental health, and that amending this rule would be beneficial for research. See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Marie-Eve Leclerc, Ph.D. Candidate, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual).

106 *Criminal Code*, R.S.C. (1985), c. C-46, s. 649.

107 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Shauna Jobagy, Deputy Clerk of the Court, Court of Queen's Bench, Alberta Juror Support Program); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Michelle Lonergan, Ph.D. Candidate, As an Individual; Patrick Baillie, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual).

108 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual).

A negative consequence of this law is that jurors are unable to discuss with a mental health professional what they experienced during the deliberations. To help address the stress caused by the deliberations, several witnesses recommended amending section 649 of the *Criminal Code* so that jurors would be permitted to discuss the deliberations with a mental health professional.[109]

According to Ms. Vanessa MacDonnell of the Criminal Lawyers' Association:

> For many of the concerns that animate the juror secrecy rule, such as the desire for decisions to be final, the desire to preserve the integrity of the deliberation process, and preventing jurors from being subsequently harassed, none of those concerns are really at play if you create a narrow exception[.][110]

In Australia, the State of Victoria's *Juries Act* stipulates that jury deliberations are to remain confidential, but it establishes an exception:

> Nothing ... prevents a person who has been a juror from disclosing any statements made, opinions expressed, arguments advanced or votes cast in the course of the deliberations of that jury to a registered medical practitioner or a registered psychologist in the course of treatment in relation to issues arising out of the person's service as a juror.[111]

The Committee is in favour of establishing an exception to the secrecy rule for jury deliberations so that jurors may discuss the deliberations for therapeutic reasons. The Committee believes that the exception outlined in the State of Victoria's *Juries Act* is a good example and that the Government of Canada should use it as a model to draft a similar exception for the *Criminal Code*.

If such an exception is made, the Government of Canada should inform the various professional bodies for mental health professionals to ensure that their professional

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109 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual; Mark Zaborowski, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Vanessa MacDonnell, Associate Professor, Faculty of Law - Common Law Section, University of Ottawa, Criminal Lawyers' Association); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (William M. Trudell, Chair, Canadian Council of Criminal Defence Lawyers).Many jurors were of the opinion that a more lenient juror secrecy rule would in fact be beneficial for jurors. See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Mark Farrant, As an Individual; Tina Daenzer, As an Individual; Patrick Fleming, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Michaela Swan, As an Individual).

110 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Vanessa MacDonnell, Associate Professor, Faculty of Law - Common Law Section, University of Ottawa, Criminal Lawyers' Association).

111 Australia, State of Victoria, *Juries Act 2000*, s. 78.

rules of conduct address this new situation. In light of these considerations, the Committee recommends the following:

Recommendation 4 – A More Lenient Secrecy Rule for Jury Deliberations

That the Government of Canada amend section 649 of the *Criminal Code* so that jurors are permitted to discuss jury deliberations with designated mental health professionals once the trial is over.

CHAPTER 5: CONDITIONS IN WHICH JURORS PERFORM THEIR DUTIES

Several witnesses highlighted problems involving compensation for jurors and the physical environment in which they perform their duty. The following sections address these issues.

5.1 Importance of adequately compensating jurors

The vast majority of witnesses said that the compensation offered to jurors is inadequate[112] and that financial insecurity was a major concern and a cause of significant stress.[113] Many individuals who are called to serve on a jury have financial obligations that must be met, commitments at work, or dependent children or adults, and they rely on their income to meet their obligations.

> **"It was lucky for me at that time that I worked for the federal government, so I had an income, but if I think of all the people who are on jury duty who aren't getting paid, that's a problem. How do you survive? How do you make ends meet, especially if you have children or something like that?"**
>
> Ms. Cherish De Moura, former juror

Several witnesses pointed out that serving on a jury often means being away from work, in some cases for a long time.[114] Across the country, employers are required to grant their employees leave to fulfill their jury duty.[115] However, except in the province of Newfoundland and

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112 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Mark Farrant, As an Individual; Patrick Fleming, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Michaela Swan, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Vanessa MacDonnell, Associate Professor, Faculty of Law - Common Law Section, University of Ottawa, Criminal Lawyers' Association); JUST, *Evidence*, 1st Session, 42nd Parliament, 8 February 2018 (Doug Morton, Director, Government Relations, Canadian Standards Association).

113 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Patrick Fleming, As an Individual).

114 Two of the jurors who appeared before the Committee had to go into work after long days at trial as they felt pressure from their employer, which added to their stress. JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Mark Farrant, As an Individual; Scott Glew, As an Individual).

115 This requirement is found in provincial and territorial legislation.

Labrador, provincial and territorial legislation does not require employers to pay their employees when they are serving on a jury.[116]

The compensation granted to jurors varies widely from one province or territory to the next.[117] For example, in Ontario, jurors receive $40 a day after the 10th day of jury duty,[118] while in Alberta, jurors receive $50 a day commencing on the first day of service.[119] In addition, jurors in some provinces and territories have access to other benefits, such as an allowance for child care, travel costs or meal costs, while jurors in other provinces and territories do not. For example, Ontario jurors do not receive compensation for child care expenses, but Alberta jurors do.[120]

In the vast majority of cases, the compensation offered to jurors is lower than the minimum wage.[121] Another factor that must be considered is that jury duty involves

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116 In Australia, unless state law is more generous, federal legislation provides that employers must pay jurors the shortfall for a period of 10 days. In the State of Victoria, jurors receive a per diem and employers must pay the shortfall the entire length of the trial. However, compensation varies from one state to another. In the United States, eight states have passed laws requiring employers to pay the salary of employees who are called to serve as jurors. In Arizona, a fund has been set up for long trials (exceeding five days) to reimburse jurors for an equivalent of their regular pay, up to $300 a day. JUST, *Evidence*, 1st Session, 42nd Parliament, 8 February 2018 (Paula Hannaford-Agor, Director, Center for Jury Studies, National Center for State Courts).

117 Provincial and territorial legislation provides for different levels of compensation. A document summarizing the provincial and territorial legislative authorities for juror compensation is set out in Appendix D of this report. The same is true in the United States, where each state determines what compensation jurors will receive; see JUST, *Evidence*, 1st Session, 42nd Parliament, 8 February 2018 (Paula Hannaford-Agor, Director, Center for Jury Studies, National Center for State Courts).

118 In Ontario, after the 49th day of the trial, the daily rate increases to $100 a day.

119 JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Shauna Jobagy, Deputy Clerk of the Court, Court of Queen's Bench, Alberta Juror Support Program; Julia Bielecka, Manager, Operational Support, Court Services Division, Ministry of the Attorney General, Ontario Juror Support Program); JUST, 1st Session, 42nd Parliament, Nunavut Court of Justice, A study of counselling and other mental health supports for jurors: identifying the various sources of stress arising at every stage of jury duty in Nunavut, Brief, 30 January 2018; JUST, 1st Session, 42nd Parliament, Michael J. Armstrong, Crime doesn't pay, but jury duty should, Brief, 16 August 2017.

120 JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Shauna Jobagy, Deputy Clerk of the Court, Court of Queen's Bench, Alberta Juror Support Program; Julia Bielecka, Manager, Operational Support, Court Services Division, Ministry of the Attorney General, Ontario Juror Support Program).

121 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual).

additional expenses, such as costs for travel,[122] meals, parking and child care[123] or elder care[124]. As a result, some individuals simply cannot afford to serve on a jury.

The Committee heard that provincial legislation regarding juries generally includes an exemption for financial reasons.[125] While this exemption can be beneficial for prospective jurors who do not have the financial means to serve on a jury for a particular case, it can make juries less representative.[126]

> We talk about the jury as being this great democratic institution, but many people justifiably ask to be excused because they just can't afford to do it.[127]

When jurors are not compensated adequately, a segment of the population is effectively missing from the jury. While the goal is for a jury to represent a cross-section of the population, "the right demographic,"[128] with people from all economic backgrounds, currently only people who have the financial means or who are still able to draw on their salary or other income, such as some people who are union members, can sit on a

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122 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual); Ms. Vanessa MacDonnell mentioned that, in Ontario, jurors often have to travel long distances to the courthouse. That is one of the reasons that Indigenous people are under-represented on juries. See JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Vanessa MacDonnell, Associate Professor, Faculty of Law - Common Law Section, University of Ottawa, Criminal Lawyers' Association).

123 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Mark Farrant, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Vanessa MacDonnell, Associate Professor, Faculty of Law - Common Law Section, University of Ottawa, Criminal Lawyers' Association); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (Mark Mossey, Executive Legal Officer, Office of the Senior Judge, Judges' Chambers, Nunavut Court of Justice).

124 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Vanessa MacDonnell, Associate Professor, Faculty of Law - Common Law Section, University of Ottawa, Criminal Lawyers' Association).

125 JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Julia Bielecka, Manager, Operational Support, Court Services Division, Ministry of the Attorney General, Ontario Juror Support Program; Shauna Jobagy, Deputy Clerk of the Court, Court of Queen's Bench, Alberta Juror Support Program). Ms. Jobagy also indicated that Alberta receives many applications to be excused due to financial hardship.

126 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Vanessa MacDonnell, Associate Professor, Faculty of Law - Common Law Section, University of Ottawa, Criminal Lawyers' Association); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual).

127 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Vanessa MacDonnell, Associate Professor, Faculty of Law - Common Law Section, University of Ottawa, Criminal Lawyers' Association).

128 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual).

jury.[129] According to Mr. Patrick Baillie, in these conditions, it is "hardly a jury of one's peers."[130]

Throughout this study, several witnesses said that compensation for jurors should be increased to reduce the stress associated with financial concerns and to ensure that the composition of juries is more representative of the general population.[131] A number of witnesses shared the view that the compensation provided to jurors should at least be equivalent to minimum wage.[132] The minimum amount would therefore be between $100 and $120 per day.[133]

Similarly, a number of witnesses said that jurors should be reimbursed for expenses related to their jury duty, such as the costs for the care of dependent children and adults,[134] travel,[135] parking and meals.

In light of these considerations, the Committee recommends the following:

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129 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual).

130 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual).

131 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Vanessa MacDonnell, Associate Professor, Faculty of Law - Common Law Section, University of Ottawa, Criminal Lawyers' Association; Jane Goodman-Delahunty, Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (Brian Bornstein, Professor of Psychology, Courtesy Professor of Law, University of Nebraska-Lincoln, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 8 February 2018 (Paula Hannaford-Agor, Director, Center for Jury Studies, National Center for State Courts; Doug Morton, Director, Government Relations, Canadian Standards Association).

132 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Cherish De Moura, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual).

133 Ibid.

134 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Vanessa MacDonnell, Associate Professor, Faculty of Law - Common Law Section, University of Ottawa, Criminal Lawyers' Association).

135 JUST, *Evidence*, 1st Session, 42nd Parliament, 6 December 2017 (Patrick Baillie, As an Individual). It was mentioned that, in Ontario, jurors often have to travel long distances to fulfill their jury duty. That is one reason that Indigenous people are under-represented on juries. See also JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Vanessa MacDonnell, Associate Professor, Faculty of Law - Common Law Section, University of Ottawa, Criminal Lawyers' Association).

Recommendation 5 – Daily Allowance

That the Minister of Justice encourage the provinces and territories to offer jurors a daily allowance for services rendered of at least $120 throughout the legal proceedings which should be adjusted to reflect cost of living increases.

Recommendation 6 – Compensation for Related Costs

That the Minister of Justice encourage the provinces and territories to offer jurors compensation to cover the costs associated with serving as a juror, such as the cost of care for dependent children or adults, travel, parking and meals.

5.2 Optimizing the physical environment in which jurors perform their duty

In the course of this study, a number of witnesses pointed out the need to improve the accommodations available to jurors.[136] Comments were made, for example, regarding the physical inadequacies of jury boxes and deliberation rooms, as well as the lack of diversion spaces to relax and unwind. A number of jurors also felt uncomfortable having to share spaces with other participants in the proceedings, such as the restrooms, courthouse entrances and parking lots.[137]

The evidence gathered by the Committee suggests that the physical environment in which jurors perform their duty has an impact on their overall experience with jury service. Dissatisfaction with the overall

> **"[T]he seating in the jury box was quite uncomfortable for the long periods that a juror is required to sit in them. I could not stretch my legs out in front of me, as they were basically stuck at a 90-degree angle because of the face boards in front of me. My legs felt cramped and in order to cross my legs for a change I had to twist my whole body to get one leg around the other. If this affected me, I was wondering how it affected taller jurors."**
>
> Ms. Laura McRae, a former juror

136 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Scott Glew, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Michaela Swan, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Jane Goodman-Delahunty, Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University, Sydney, Australia, As an Individual).

137 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Scott Glew, As an Individual).

conditions in which jurors perform their duty has the potential to increase stress among jurors and to negatively influence their willingness to participate in jury service again in the future. It may also erode their overall confidence in the justice system.[138]

Professor Jane Goodman-Delahunty told the Committee that making the juror experience more comfortable should not be neglected, especially during their deliberations. She explained that physical comforts, such as having access to a jury room with natural light and a view that can offer visual relief as well as extra seating aside from the deliberation table to allow smaller gatherings and breaks from the group "can do a great deal to relieve some of the pressure" associated with the burden of deciding whether the defendant is liable or guilty.[139] In the same vein, Ms. Michaela Swan, a former juror, reminded the Committee that:

> [j]ury-room configuration is worth a consideration. When spending 12 hours a day or more confined in a very small room with two adjoining bathrooms, a breakout room or an extra space to spread out would be beneficial.[140]

None of the former jurors who appeared before the Committee indicated that they felt intimidated during their service. However, there are opportunities for intimidation to occur during and after court proceedings. Aside from the possibility of intimidation, a number of former jurors told the Committee that they often felt awkward having to come into contact with, for example, witnesses and other individuals who have interest in the proceedings either in the parking lot, in the restrooms or coming into and out of the courthouse.[141] Mr. Daniel Cozine noted specifically:

> For me, we had about two days of trial leaving the courthouse essentially out the same doors as the families of both the victims and the accused. We asked for a separate exit. They were very accommodating in that regard, but coming in, we had to go through the security checks into the courthouse and of course there were the family members. I wouldn't call it intimidation. I would call it very awkward, at least for me and a few others as we walked down the hallway to the jury-room. You don't know if you should be making eye contact with these people or not, and how that's going to go. I wouldn't

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138 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Jane Goodman-Delahunty, Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University, Sydney, Australia, As an Individual).

139 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Jane Goodman-Delahunty, Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University, Sydney, Australia, As an Individual).

140 JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Michaela Swan, As an Individual).

141 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Scott Glew, As an Individual); JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Michaela Swan, As an Individual; Daniel Cosine, As an Individual).

> say I felt intimidated. It was just a very awkward few moments getting to the courthouse every day.[142]

The Committee agrees with witnesses that "[h]aving separate parking areas, break areas, away from the lawyers, families and participants in the trial" would be preferable.[143] However, as highlighted by Mr. Warren Miller, a Sheriff and Local Registrar in the Saskatchewan Queen's Bench Court, many court facilities present challenges in that regard.[144] Considering that changes to the infrastructure of these buildings are not always feasible, court employees must do their best to manage those situations. The Committee was reassured that court officials who participated in this study are well aware of this issue and of the risk of jurors being intimidated by other parties. Ms. Shauna Jobagy, deputy clerk of the Court Queen's Bench in Alberta, noted:

> Yes, it could be an issue. So far the Province of Alberta has not been made aware of any altercations. They certainly could go through security at the same time, so there's the possibility. In the larger centres of Calgary and Edmonton, there's not so much possibility of parking in the same parking lot or anything, while in the smaller centres it could happen that they all use the same parking lot. We simply try to be more aware with the sheriff escorts and the clerk escorts about keeping the jury as protected as possible. They would use secure hallways, not the public hallways, but they still have to go through security.[145]

While none of the former jurors who appeared before the Committee recalled fearing for their safety and security during the legal proceedings, jurors' safety and security should be a paramount consideration of court personnel. In certain cases, Mr. Mark Farrant, a former juror, noted:

> Imagine being a juror in a criminal trial involving organized crime, in which there are multiple defendants and multiple parties and multiple gangs involved in a highly brutal act. You are driving your car to a small courthouse. You are parking your car next to witnesses from those organized criminal organizations. They're parking next to you. They're sitting there staring at you.[146]

In light of these considerations, the Committee recommends:

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142 JUST, *Evidence*, 1st Session, 42nd Parliament, 27 November 2017 (Daniel Cozine, As an Individual).

143 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Scott Glew, As an Individual).

144 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Warren Miller, Sheriff and Local Registrar, Queen's Bench Court, Court Services, Ministry of Justice, Government of Saskatchewan).

145 JUST, *Evidence*, 1st Session, 42nd Parliament, 29 November 2017 (Shauna Jobagy, Deputy Clerk of the Court, Court of Queen's Bench, Alberta Juror Support Program).

146 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Mark Farrant, As an Individual).

Recommendation 7 – Optimal Physical Environment for Jurors

That the Minister of Justice encourage the provinces and territories to minimize casual interactions between jurors and other participants in the proceedings outside the courtroom to reduce the potential for intimidation and awkwardness. Some of the initiatives may include special parking spaces and access to the courthouse and courtroom. The general comfort of jurors should also be considered. Rooms should be sufficiently large and well lit, and include areas where jurors can be alone to recharge, if necessary.

CHAPTER 6: PROVIDING TRAINING FOR JUDGES, CORONERS AND JUDICIAL OFFICIALS TO INCREASE AWARENESS OF THE MENTAL HEALTH NEEDS OF JURORS

Judges and coroners have considerable discretionary power in the way a trial or an inquest will unfold. During this study, witnesses highlighted, for example, that judges and coroners can provide breaks to help jurors deal with gruesome evidence, such as graphic photos, videos and testimony, or send the jury back home earlier to allow them to decompress and unwind.[147] They can also allow jurors to seek counselling during the trial or the inquest. Indeed, witnesses appearing before the Committee told us of two occasions where such counselling had been permitted during the proceedings.[148]

Throughout this study, witnesses expressed concerns about the lack of awareness among coroners, the judiciary and court officers, such as bailiffs and sheriffs, of the potential impact of legal proceedings on jurors' mental health and well-being. Professor Peter Jaffe noted that "[n]ot all judges are equally sensitive to helping jurors deal with the aftermath of what they've been exposed to."[149] He stated that the more judges are aware of the impact of their own exposure to gruesome evidence over the years, "the more sensitive they're going to be to a juror who's dealing with something like this, potentially for the first time."[150]

Evidence collected from former jurors also suggests that jurors are demanding greater sensitivity to these issues from the judiciary and all of the other actors of the justice system. Based on her research on Canadian jurors, Ms. Sonia Chopra reported the following:

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147 A practice already adopted by Canadians judges when dealing with horrific criminal cases according to Mr. Trudell who also noted that: "They would be conscious of the breaks that the jurors need. We have very talented judges in this country who know how to deal with these kinds of cases." JUST, *Evidence*, 1st Session, 42nd Parliament, 6 February 2018 (William M. Trudell, Chair, Canadian Council of Criminal Defence Lawyers). See also, JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Patrick Fleming, As an Individual).

148 The Committee was told more specifically that juror counselling was offered during the trial of Paul Bernardo and the Ontario coroner's inquest into the death of Ashley Smith. See JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Tina Daenzer, As an Individual) and See JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017(Cherish De Moura, As an Individual). According to Ms. Breese Davies, the process is more flexible in coroners' inquests because nobody's liberty interest is at stake. JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Breese Davies, Vice-President, Criminal Lawyers' Association).

149 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Peter Jaffe, Professor, Faculty of Education, Western University, As an individual).

150 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Mark Zaborowski, As an Individual; Peter Jaffe, Professor, Faculty of Education, Western University, As an Individual).

> Jurors I spoke with asked that there be a greater sensitivity, on both sides [prosecutors and defense lawyers], to what is being presented. With regard to things like timing the gruesome evidence right after lunch, don't do that. Prepare jurors by saying something like, "All right, you're going to hear some really graphic evidence, and I want you to be prepared for it", although you can never fully be prepared for it, as Ms. De Moura has mentioned. As a lawyer, there's a need to be sensitive to the idea that while you may have seen a piece of evidence a million times and have become desensitized to it, that's not the case for everyone who's going to be seeing it. I think being compassionate when presenting the evidence is important on both sides.[151]

Professor Jane Goodman-Delahunty also spoke about the importance of being more sensitive when presenting gruesome evidence to jurors. She noted:

> It's important to try to provide the jury with some warning in advance that this is forthcoming and to try to give them some options to manage that. We have found it helpful also if that sort of material is not presented in a very lengthy series but rather in a series of a shorter duration, not just before lunch, not just after lunch, and not very late in the day either, so that jurors have some time for relief from and processing of that information, often perhaps requiring a break after some confronting information is presented.[152]

If judges, coroners and judicial officials who interact with jurors were better informed of the potential impact of traumatic evidence and of the common symptoms of stress, the evidence suggests that they might be more responsive to jurors' needs.[153] For judges, such awareness might result in providing more breaks for jurors during the proceedings or being more inclined to meet the jurors after the verdict to debrief and remind them of the psychological support that they can access, if needed.[154] Court officials might also be more inclined to provide more guidance throughout the process and to advise judges of juror stress symptoms that they have observed.

It was suggested by Mr. Mark Zaborowski that specific training for judges be added to the National Judicial Institute's[155] curriculum to help them understand the issue of juror

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151 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual).

152 JUST, *Evidence*, 1st Session, 42nd Parliament, 1 February 2018 (Jane Goodman-Delahunty, Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University, Sydney, Australia, As an Individual).

153 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Sonia Chopra, Chopra Koonan Litigation Consulting, As an Individual; Mark Zaborowski, As an Individual; Peter Jaffe, Professor, Faculty of Education, Western University, As an Individual).

154 As recommended by Professor Jaffe, judges should be given instructions on what to say to jurors about the potential impact of their service on their mental well-being. JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Peter Jaffe, Professor, Faculty of Education, Western University, As an individual).

155 The National Judicial Institute is responsible for the overall coordination of judicial education in Canada.

stress and learn ways to support jurors during the proceedings, a recommendation also supported by Professor Peter Jaffe.[156]

To ensure that judges, coroners and judicial officials who interact with jurors are more aware of the common symptoms of stress reactions to jury duty and that they are better equipped to assist jurors throughout the process, the Committee recommends:

Recommendation 8 – Funding to the National Judicial Institute

That the Government of Canada provide funding to the National Judicial Institute to develop training designed to increase judicial awareness of the mental health needs of jurors.

Recommendation 9 – Increasing Awareness

That the Minister of Justice encourage the provinces and territories to support training programs aimed at increasing awareness among judges, coroners and judicial officials who interact with jurors, such as sheriffs and bailiffs, of the potential impact of legal proceedings on the mental health of jurors in order to ensure an environment that is more responsive to their mental health needs.

156 JUST, *Evidence*, 1st Session, 42nd Parliament, 11 December 2017 (Mark Zaborowski, As an Individual; Peter Jaffe, Professor, Faculty of Education, Western University, As an individual, Faculty of Education, Western University, As an Individual).

CHAPTER 7: THE NEED FOR COLLABORATION BETWEEN FEDERAL, PROVINCIAL AND TERRITORIAL GOVERNMENTS

The Committee is cognizant that close federal, provincial and territorial collaboration is essential in achieving meaningful results to support jurors across the country. Assisting provinces and territories by providing a one-time basis funding for the recommendations in our report may be helpful in addressing this issue.

The Committee also requests that the Minister of Justice share the best practices highlighted in our report, and the recommendations, with the Minister's provincial and territorial counterparts at the earliest opportunity. This is an important step to achieve our common goal — ensuring that jurors are more empowered to effectively serve in Canada.

In light of these considerations, the Committee recommends:

Recommendation 10 – Federal Funding

That the Government of Canada provide funding on a one-time basis to the provinces and territories to cover some of the costs resulting from the implementation of the recommendations set out in this report.

Recommendation 11– Sharing the Findings and Recommendations of the Committee

That the Minister of Justice, at the earliest opportunity, share the practices recommended in this report with the Minister's provincial and territorial counterparts during the next meeting of the federal-provincial-territorial ministers responsible for justice and public safety.

CONCLUSION

The recommendations formulated in this report are guided by the experience of those who have served as jurors, research presented to us by witnesses and the experience of certain jurisdictions where reforms have been implemented. Their implementation will mitigate stress arising throughout jury service.

The Committee recognizes the critical role jurors play in our justice system and concludes that there are multiple improvements with regard to supporting jurors that can be made by provincial, territorial and federal governments. Jurors should not be disadvantaged financially or psychologically as a result of conducting their civic duty. "Our right to trial by jury depends on the willingness of all citizens to serve."[157] Improving juror satisfaction may also encourage more citizens to participate in jury service and increase overall confidence in the justice system.

157 JUST, *Evidence*, 1st Session, 42nd Parliament, 22 November 2017 (Tina Daenzer, As an Individual).

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
As individuals	2017/11/22	76
Tina Daenzer		
Mark Farrant		
Patrick Fleming		
Scott Glew		
As individuals	2017/11/27	77
Daniel Cozine		
Michaela Swan		
Alberta Juror Support Program	2017/11/29	78
Shauna Jobagy, Deputy Clerk of the Court Court of Queen's Bench		
Dora Newcombe		
Ontario Juror Support Program		
Julia Bielecka, Manager Operational Support, Court Services Division, Ministry of the Attorney General		
Claude Bourque		
Yukon Court Services		
Shannon Jensen, Manager Court Operations		
Canadian Mental Health Association	2017/12/06	80
Greg Kyllo, National Director Program Innovation		
Centre for Addiction and Mental Health		
Vivien Lee, Psychologist		
As individuals		
Patrick Baillie		
Marie-Eve Leclerc, Ph.D. Candidate		

Organizations and Individuals	Date	Meeting
As individuals	2017/12/06	80
Michelle Lonergan, Ph.D. Candidate		
As individuals	2017/12/11	81
Sonia Chopra Chopra Koonan Litigation Consulting		
Cherish De Moura		
Peter Jaffe, Professor Faculty of Education, Western University		
Mark Zaborowski		
Centre for Addiction and Mental Health	2018/02/01	83
Katy Kamkar, Clinical Psychologist		
Criminal Lawyers' Association		
Breese Davies, Vice-President		
Vanessa MacDonnell, Associate Professor Faculty of Law - Common Law Section, University of Ottawa		
Government of Saskatchewan		
Glennis Bihun, Executive Director and Inspector Court Offices, Court Services, Ministry of Justice		
Warren F. Miller, Sheriff and Local Registrar Queen's Bench Court, Court Services, Ministry of Justice		
Mental Health Commission of Canada		
Micheal Pietrus, Director Mental Health First Aid Canada and Opening Minds		
Michel Rodrigue, Vice-President Organizational Performance and Public Affairs		
As an individual		
Jane Goodman-Delahunty, Professor Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University		
American Society of Trial Consultants	2018/02/06	84
Sandra Donaldson, Vice-President		
Canadian Council of Criminal Defence Lawyers		
William M. Trudell, Chair		

Organizations and Individuals	Date	Meeting
Court Services Victoria	2018/02/06	84
Paul Dore, Juries Commissioner		
Nunavut Court of Justice		
Mark Mossey, Executive Legal Officer Office of the Senior Judge, Judges' Chambers		
As an individual		
Brian Bornstein, Professor of Psychology and Courtesy Professor of Law University of Nebraska-Lincoln		
Canadian Standards Association		
Doug Morton, Director Government Relations		
Candace Sellar, Program Manager Worker and Public Safety		
National Center for State Courts		
Paula Hannaford-Agor, Director Center for Jury Studies		
As an individual		
Cheryl Thomas, Professor Judicial Studies, Director, Jury Project, Faculty of Laws, University College London		

APPENDIX B
LIST OF BRIEFS

Organizations and Individuals

Armstrong, Michael J.

Baillie, Patrick

Chopra, Sonia

Clulow, Matthew

Hogan, Janeatt

Jaffe, Peter

McRae, Laura

Nunavut Court of Justice

APPENDIX C
ENGLAND AND WALES JUROR'S PAMPHLET

Your Legal Responsibilities as a Juror

By serving on this jury you are fulfilling a very important **PUBLIC SERVICE**. This means you have some important **LEGAL RESPONSIBILITIES**.

As a juror you have taken a **LEGAL OATH** or **AFFIRMATION** to try the defendant based **ONLY** on the evidence you hear in court.

This means the **FAIRNESS** of the trial depends on you following a few very **IMPORTANT LEGAL RULES.** These rules are explained to you in this Notice.

You need to **READ** these rules, and make sure you **UNDERSTAND and FOLLOW** these rules at all times.

You should keep this Notice with your **SUMMONS** at all times while you are on Jury Service.

What Would Happen If You or Any Juror Did Not Follow These Rules?

If you do not follow the rules in this Notice, you may be in **CONTEMPT OF COURT** and committing a **CRIMINAL OFFENCE.** This is because these rules about what you can and cannot do as a juror are **ORDERS OF THE COURT** and also part of the **CRIMINAL LAW**. You can be prosecuted for breaking these rules, and if you are found guilty the maximum sentence is two years in **PRISON**, a **FINE** or both.

THE RULES

Looking for Information About Your Case

It is **ILLEGAL** for you to **LOOK** for any information at all about your case on the **INTERNET** or **ANYWHERE ELSE** during the trial.

This means you **CANNOT LOOK** for any information about:

- Any **PERSON** involved in the case. This means any **DEFENDANT**, **WITNESS** or anyone associated with the case including the **JUDGE** and **LEGAL TEAMS**.
- The **CRIME or CRIME SCENE.**
- The **LAW** and **LEGAL TERMS** used in the case.
- **COURT PROCEDURES.**

It is also **ILLEGAL** for you to ask **ANYONE** else to **LOOK FOR YOU.**

News Stories about Your Case

This also means that if you see or hear any stories about your case in the **NEWS** you should **NOT PAY ANY ATTENTION** to them.

All the information you will need to decide the case will be given to the jury in the **EVIDENCE** you hear **IN COURT** and the instructions on the **LAW** that the **JUDGE GIVES** to the jury.

Discussing the Case: 2 Rules

There are **2 RULES** every juror must follow about discussing their case.
One rule tells you what you can discuss about the case **WHILE THE TRIAL IS GOING ON**.
The other rule tells you what you can discuss about the case **AFTER THE TRIAL IS OVER**.

RULE 1: DURING THE TRIAL

This is from the moment you take the juror oath until the judge finally discharges you from serving on the jury at the end of the trial.
During the trial you can **ONLY DISCUSS** the case with the **11 OTHER JURORS** on your jury and only when you are **ALL TOGETHER** and there is no risk of you being overheard.

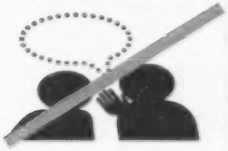
This means that during the trial you **CANNOT DISCUSS** the case with **FAMILY, FRIENDS** or **ANYONE** else. Discussing the case means writing or speaking about the case in person or on any **SOCIAL NETWORKING SITES** such as Facebook or Twitter or on blogs and chat rooms.

RULE 2: WHEN THE TRIAL IS OVER

Once the trial is over and you are no longer serving on the jury, you **CAN DISCUSS** the case with anyone. But there is **ONE EXCEPTION**.

Even after the trial is over, you **MUST NOT DISCUSS** what was said or done by you or any other member of the jury while the jury was in the **DELIBERATING ROOM** trying to reach a verdict, unless it is for the purpose of an official investigation into the conduct of any juror.

What If Someone Tries to Speak to Me about the Case During the Trial?



It is **ILLEGAL** for anyone who is not on your jury to **TRY TO SPEAK WITH YOU** during the trial about the case or try to influence you in any way about your decision in the case. If this should ever happen it is very important that you **TELL** the **COURT IMMEDIATELY**. If it happens when you are not at court you should **CALL THE POLICE**.

Collective Responsibility of Your Jury

ALL 12 MEMBERS OF THE JURY must follow these rules.

The jury **MUST ACT AS A GROUP** to make sure that everyone on the jury follows the oath you have each made to follow these rules.

What Do I Do If I Think Any of These Rules Have Not Been Followed?

If you think that any of these rules have not been followed during the trial it is extremely important that you **TELL THE COURT** about this **IMMEDIATELY**, but do not discuss it with your fellow jurors or anyone else.

To tell the Court, you can speak with your **USHER** or **JURY OFFICER** or you can write a note to the **JUDGE** and give it to the usher.

Why Do I Need to Follow These Rules?

It is your **DUTY** to **REPORT** any **BREACHES** of these rules by anyone, including any juror. This is necessary to ensure the trial is **FAIR.**

If every juror does not follow these rules the **TRIAL** may be **STOPPED,** the jury dismissed and the trial will have to start again with a new jury.

This will cause **PROBLEMS** for everyone involved in the case and will waste everyone's time and a lot of taxpayers' **MONEY.**

Help and Guidance for You at Any Time

If you have any concerns about what to do as a juror at any time you can always **SPEAK WITH THE JURY OFFICER** or **SEND A NOTE TO THE JUDGE**.

The Jury Officer and the Judge are both there to help you carry out your important role as a juror properly.

What If I Feel Upset About My Experience as a Juror After the Trial?

When the trial is over, if you feel **UPSET** about anything to do with your case or if you just want to **TALK** about how you felt being a juror, **HELP** is available. Your **GP** can help you find free counselling services. You can also talk to the **SAMARITANS** any day at any time you like in your own way about whatever is bothering you, no matter how small it may be. You can call them for **FREE** on **116 123** or **EMAIL** at: **jo@samaritans.org**

APPENDIX D
PROVINCIAL AND TERRITORIAL LEGISLATIVE AUTHORITIES FOR JUROR COMPENSATION

British Columbia

Legislative Authorities

- ss. 24 and 34 of the *Jury Act*
- ss. 1 and 3 of the *Jury Regulation*

Fees in General

Jurors are entitled to:

- $20 per day for the first 10 days of the trial;
- $60 per day for the 11th to the 49th day of the trial;
- $100 per day for the 50th and each succeeding day of the trial.

Compensation for Care

Jurors are entitled to up to $50 per day per child for child care costs to attend a sitting or trial if:

- a receipt is provided to the sheriff; and
- the child care was arranged solely to attend a sitting or trial and would not otherwise have been provided.

Compensation for Meals

n/a (Jurors are responsible for all meals, except when the jury is sequestered.)

Compensation for Travel

Jurors are entitled to the following allowances (to travel to and from the courthouse to attend a sitting or trial):

- parking costs: $20 per day (if receipt is provided to the sheriff);
- use of private vehicle by the juror: $0.50 per kilometre for travel costs in excess of 32 km per day;
- taxi costs: up to $15 per day (if receipt is provided to the sheriff);

- public transportation: up to $10 per day.

Alberta

Legislative Authorities

- s. 25 of the *Jury Act*
- s. 4 of the *Jury Act Regulation*
- s. 15 of the *Public Service Relocation and Employment Expenses Regulation* and the *Travel, Meal and Hospitality Expenses Policy* of the Treasury Board

Fees in General

Jurors are entitled to:

- $50 per day or part of day.

Compensation for Care

According to the testimony of Ms. Shauna Jobagy, Deputy Clerk of the Court, Court of Queen's Bench, Alberta Juror Support Program, babysitting and day care are covered if supported by a receipt.

Compensation for Meals

Jurors are entitled to the following allowances:

- reasonable meal expenses actually incurred (if the juror is not resident in the vicinity of the place of trial or proceedings or if the juror is resident in the vicinity of the place of trial or proceedings but is required to go to a restaurant for meals);
- if the claim is not supported by receipts or other proof, it shall be paid in accordance with the *Public Service Subsistence, Travel and Moving Expenses Regulation*:
  - breakfast: $9.20;
  - lunch: $11.60;
  - dinner: $20.75.

Compensation for Travel

Jurors are entitled to the following allowances:

- when travelling by railway, bus or other public carrier: the actual fare paid in going to or returning from the place of trial or proceedings;
- when travelling by private automobile: $0.505 per kilometre.

Manitoba

Legislative Authorities

- ss. 42 and 53 of *The Jury Act*
- ss. 1 to 4 of the *Jury Regulation*
- *General Manual of Administration*

Fees in General

Jurors are entitled to:

- no fee for the first 10 days of trial;
- $30 per day or part of day after the tenth day of trial;
- where a trial is of unusual length, or where, in the opinion of the presiding judge, a juror has suffered undue hardship by reason of the juror's attendance at court, the presiding judge may recommend to the sheriff that additional fees (the additional fee cannot exceed $10 for each day in excess of 10 days) be paid to a juror.

Compensation for Care

n/a

Compensation for Meals

Jurors are entitled to:

- reasonable expenses necessarily incurred for meals. The claim for meals has to be supported by receipts or proof of expenses incurred. If not, expenses are paid in accordance with the rates provided for in the Travel and Related Expenses (s. 25 of the *General Manual of Administration*).

Compensation for Travel

If the juror's usual residence or place of business is not within the limits of the city or town in which court is held is, he or she is entitled to be reimbursed for travel expenses:

- for public carrier: the actual necessary and reasonable return fare;
- for privately owned vehicle: rates allowed from time to time in the *General Manual of Administration* for privately owned automobiles.

Saskatchewan

Legislative Authorities

- ss. 14 and 38 of the *Jury Act, 1998*
- ss. 3 and 4 of *The Jury Regulations, 2000*
- Saskatchewan Public Service Commission, *Travel Allowances* (PS 601-A)

Fees in General

Jurors are entitled to:

- $80 per day or part of a day (unless the person is receiving income from his or her employer while serving as a juror).

Compensation for Care

n/a

Compensation for Meals

Jurors are entitled to:

- their meal expenses that the sheriff considers reasonable.

Compensation for Travel

A juror is entitled to receive a payment for his or her travel expenses that the sheriff considers reasonable:

- when travelling by a private vehicle, $0.4255 per kilometre (North of the 54th Parallel: $0.4582);
- the actual parking expenses;
- when jurors use public transportation, at the rate established for travel expenses incurred by members of the public service when using public transportation.

Ontario

Legislative Authorities

- s. 35 of the *Juries Act*
- s. 5 of the *Administration of Justice Act*
- ss. 1, 4, 5 and 6 of the *Fees and Expenses of Jurors and Crown Witnesses Regulation 11 of the Revised Regulations of Ontario, 1990*

Fees in General

Jurors are entitled to:

- no fee for the first 10 days of trial;
- $40 per day of service after the 10th day of service and up to the 49th day of service;
- $100 per day of service after the 49th day of service.

Compensation for Care

n/a

Compensation for Meals

n/a

Compensation for Travel

A juror is entitled to a travel allowance (payable from the day on which the trial commences) only if his or her usual place of residence is not in the city or town where the trial is held:

- when travelling by private automobile:
  - $0.305 per kilometre in northern Ontario;
  - $0.30 per kilometre in southern Ontario;
- when travelling by other mode of transport than by private automobile:
  - the actual necessary and reasonable amount paid for travel.

Quebec

Legislative Authorities

- s. 46 of the *Jurors Act*
- ss. 1 to 3 of the *Regulation respecting indemnities and allowances to jurors*
- *Public Service Act* and the Directive sur les frais remboursables lors d'un déplacement et autres frais inhérents

Fees in General

Jurors are entitled to:

- $103 per day or part of day;
- $160 as of the 57th day of jury selection;
- an additional $52 where there are evening hearings or deliberations (the indemnity is fixed at $103 where the deliberations continue until the following day);
- if hearings, deliberations or confinement to premises falls on a holiday, a Saturday, 26 December or 2 January, jurors are entitled to an additional $103 (or $160 as of the 52nd day following jury selection).

Compensation for Care

Jurors are entitled, on order of a judge, to an allowance for the care of children or other dependents (payable on a weekly basis):

- $131 (for one person);
- $172 (for two persons);
- $220 (for three persons);
- $260 (for four or more persons).

Compensation for Meals

Jurors are entitled to an allowance of $46.25 per complete day. Meal allowances are as follows:

- breakfast: $10.40;
- lunch: $14.30;
- dinner: $21.55.

Compensation for Travel

Jurors are entitled to:

- when travelling by public transport, the amount paid for travel;
- when travelling by private vehicle (the minimum amount paid for the use of the private vehicle cannot be under $10.75):
  - $0.430 per kilometre for the first 8,000 kilometres;
  - $0.380 per kilometre after 8,000 kilometres;
  - parking costs.

New Brunswick

Legislative Authorities

- ss. 22 and 23 of the *Jury Act*
- ss. 13 to 15 of the *General Regulation*
- s. 6 of the *Financial Administration Act* and the *Travel Policy*

Fees in General

Jurors are entitled to the following fees:

- if a trial lasts less than 10 sitting days:
  - $20 per one half-day;
  - $40 for a full day;
- if a trial lasts 10 days or more sitting days:
  - for attendance before the tenth day of trial:
    - $20 per one half-day;
    - $40 for a full day;
  - for attendance on or after the tenth day of the trial:
    - $40 per one half-day;
    - $80 for a full day.

Compensation for Care

n/a

Compensation for Meals

A juror shall be paid compensation for meals if the juror is not entitled to reimbursement for meals from any other source and his or her attendance has not concluded before twelve o'clock or five o'clock in the afternoon:

- breakfast: $7.50;
- lunch: $10.50;
- dinner: $19.50.

Compensation for Travel

Jurors are entitled to a travel allowance for each day of attendance for every kilometre that they necessarily travel for one round trip from their residence to the Court or other place for the hearing of a proceeding:

- for each of the first 8,000 kilometres: $0.41 per kilometre;
- for each of the next 8,000 kilometres: $0.38 per kilometre.

Nova Scotia

Legislative Authorities

- s. 20 of the *Juries Act*
- s. 5 of the *Juries Regulations*

Fees in General

Jurors are entitled to:

- $40 per day.

Compensation for Care

n/a

Compensation for Meals

n/a

Compensation for Travel

Jurors are entitled to:

- $0.20 per kilometre in travelling to and from the place of the trial from the juror's residence within the jury district.

Prince Edward Island

Legislative Authorities

- s. 15 of the *Jury Act*
- s. 1 of the *Fees Regulations*

Fees in General

Jurors are entitled to:

- $25 per one-half day.

Compensation for Care

n/a

Compensation for Meals

n/a

Compensation for Travel

Jurors are entitled to the following allowances:

- within city or town limits: $6;
- within province: $0.24 per kilometre

Newfoundland and Labrador

Legislative Authorities

- ss. 42 and 43 of the *Jury Act*
- s. 6 of the *Jury Regulations*

Fees in General

Employers have the legal obligation to continue to pay the same wages and benefits to jurors in their absence.

Compensation for Care

Except where such expenses would ordinarily be incurred by the juror, where a juror ordinarily has the care of a child or children under the age of 12 or the care of an aged, infirm or mentally incompetent person, the juror is entitled to, upon production of receipts:

- the amount of expenses actually incurred in respect of that care; or

- the prevailing minimum wage rate of the province multiplied by the number of hours of jury service.

However, the sheriff may, in certain circumstances, authorize the payment to the juror of a higher amount that the sheriff considers just.

Compensation for Meals

n/a

Compensation for Travel

A juror may be paid reasonable travel expenses for:

- the fare paid in travelling to and from the place of the trial from the juror's home;
- mileage at the rate payable to a person employed as a public servant by the province travelling on government business (rates vary monthly [i.e., 1 October 2017 to 31 December 2017: $0.3619 per kilometre], see rates.)

Yukon

Legislative Authorities

- s. 32 of the *Jury Act*
- ss. 1 to 3 of the *Yukon Juror Fees and Allowances Regulation*

Fees in General

Jurors are entitled to:

- $80 per day.

Compensation for Care

n/a

Compensation for Meals

Jurors are entitled to:

- up to $25 per day if the juror resides 50 kilometres or more from the courthouse where the trial is held.

Compensation for Travel

Jurors are entitled to:

- $0.10 per kilometre for the use of their personal vehicle if they reside at least 50 kilometres from the courthouse where the trial is held.

Northwest Territories

Legislative Authorities

- s. 29 of the *Jury Act*
- s. 1 of the *Jury Fees Regulations*

Fees in General

Jurors are entitled to:

- $80 per day.

Compensation for Care

n/a

Compensation for Meals

n/a

Compensation for Travel

n/a

Nunavut

Legislative Authorities

- ss. 33 and 34 of the *Jury Act*
- s. 1 of the *Jury Fees Regulations*

Fees in General

Jurors are entitled to:

- $100 per day for the first five days of trial;
- $150 per day for the sixth and subsequent days of trial.

Compensation for Care

n/a

Compensation for Meals

n/a

Compensation for Travel

n/a

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 76, 77, 78, 80, 81, 83, 84, 85, 86, 91, 92, 95) is tabled.

Respectfully submitted,

Anthony Housefather
Chair